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June 18, 2003

VIA EMAIL & MESSENGER DELIVERY

Alan Mitchell
Minnesota Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Re: Reinhardt Comments to EQB's Proposed Permanent Rules Governing Environmental Review of Electric Power Generating Plants and High Voltage Transmission Lines in Proceedings before the Public Utilities Commission, Minnesota Rules 4410.7010 to 44010.7070

Dear Mr. Mitchell:

We hereby request that a public hearing be held concerning the proposed rules referenced above. Our specific comments and objections to the proposed rules follow.

Proposed Rule 4410.7015 – DEFINITIONS

Subpart 5. "Environmental Report." This section defines the environmental report as a written document that will describe the "human and environmental impacts" of a proposed project and alternatives to the project, along with methods to mitigate anticipated adverse impacts. However, the *current* rules for environmental review of large energy facilities at the certificate of need stage require that the review include "economic, employment, and environmental impacts, of the proposal and reasonable alternative facilities" (Minn. Rule 4410.7100, subp. 3(C); 4410.7500, subp. 3(C)). For some reason which it does not explain in its Statement of Need and Reasonableness (SONAR) concerning these proposed Rules, the EQB dropped "economic and employment" impacts from the definition and, indeed, from the content requirements for an environmental report.

Economic impact is an important consideration in environmental review and, in fact, is a required statutory element for inclusion in environmental impact statements (Minn. Stat. § 116D.04, subd. 2a). The word "economic" is not found anywhere in the EQB's SONAR for these proposed Rules, despite the fact that economic impacts are a content requirement in the current rules for environmental review at certificate of need, which have been recommended for repeal in their entirety in this rulemaking.

One important economic consideration relating to imposition of high voltage transmission lines on privately owned lands is the potential for diminution in the values of adjacent properties. This potential economic impact was included in the EQB's Final Environmental Impact Assessment for the Chisago Electric Transmission Line Project (proposed by Northern States Power Company in 1996) after citizens voiced concern about the potential for negative impacts to their property values following construction of a large new transmission line. The EQB included information in that EIA which confirmed the potential for HVTLs to diminish values in adjacent properties.

In addition, it is imperative for economic considerations to be taken into account at the certificate of need stage to enable a sound decision to be made concerning whether to construct new generation rather than new transmission lines to satisfy an identified electrical need.

We strenuously object to the EQB's failure to include economic impacts in these proposed environmental Rules, as well as its failure to even mention such deletion from the prior rules in its SONAR.

Proposed Rule 4410.7020 – ENVIRONMENTAL REVIEW BEFORE PUBLIC UTILITIES COMMISSION.

This proposed Rule similarly excludes any mention of economic impacts as discussed above, and must be corrected to specifically include that element in environmental review.

Proposed Rule 4410.7030 – PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. Notice to interested persons. This proposed Rule states that "Upon receipt of an application for a certificate of need or receipt of a transmission planning report seeking certification of a high voltage transmission line, the Environmental Quality Board shall provide notice to interested persons of the pending project. Notice must be mailed to the following persons: * * * D. those persons known to the EQB to own property or reside in the area of the proposed project."

This proposed Rule, and the rationale set forth in the SONAR for this language, is unjustifiable. The EQB acknowledges that affected landowners want to be included in government proceedings that will affect their private property interests, and says as much in its SONAR:

"The persons who are directly affected by a proposed project because they own property or live in the area where the proposed project is proposed to be located surely want to get notice as early as possible about the pending project."

(SONAR p. 20) Despite this acknowledgment, the EQB then sets out a rule containing vague language that may or may not achieve notification of potentially affected landowners and residents to include them in the proceedings.

The Minnesota Public Utilities Commission (PUC) has recently recognized the importance of including direct mailed notice to those individuals who will most likely be impacted by application for certificate of need for a high voltage transmission line that would be constructed on private lands. That is why the PUC has required "direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line" in its new transmission planning rules (Adopted Rule 7848.1900, subp. 3(A)) which have recently completed the rulemaking process and are poised to become law; the PUC included an identical notice requirement in its recently proposed amendments to the Rules of Practice and Procedure (Chapter 7829) "to Set New Notice Requirements for Certificate of Need Applications for High Voltage Transmission Lines" (these proposed rules are currently open for public comment).

Under PUC's new notice requirements, an applicant for a high voltage transmission line must propose a plan five months in advance of application/project report filing setting forth how it will accomplish mailing the required notice to affected individuals and governmental entities. Under these rules, by the time a certificate of need application (or a transmission project report) is filed with the EQB for preparation of environmental report or environmental impact statement, an approved mailing list will have been adopted by PUC for use in each particular docket.

The EQB states in its SONAR that "The language does not require the EQB to go out and determine who owns property or lives in the area . . . but if the EQB is aware of persons who could be directly affected by a proposed project, these people surely want to receive notice about the project." (SONAR p. 21) The EQB's explanation then digresses into the EQB "becoming aware of property owners and residents if a project has been discussed openly for some period of time before the certificate of need application is filed." (SONAR p. 21) This explanation makes no sense at all. The EQB's proposed rule 4410.7030, subp. 1(D) and its SONAR rationale completely ignore the existence of the PUC's pre-approved mailing list requirements. However, subp. 1(C) does include notice to "those persons on any service list maintained by the Public Utilities Commission for the proceeding." The language of subparts C and D should be combined and clarified to specifically reference those persons identified for notification under PUC's new notice requirements and procedures.

Similarly, proposed Rule 4410.7030, subp. 1(E) calls for notice to “local governmental officials in the area of the proposed project,” and the SONAR explanation vaguely states that “It is easy enough to determine which local officials should be notified and notice will go out to these officials.” (SONAR p. 21) Again, the EQB ignores PUC’s new rules establishing a pre-approved mailing list for each project, which will include the names of “local and tribal governments whose jurisdictions are reasonably likely to be affected by the proposed transmission line.” (Adopted Rule 7848.1900, subp. 3(C) – PUC’s proposed amendments to Chapter 7829 notice requirements at certificate of need contain this same requirement using similar language.) The EQB should specifically reference the PUC mailing list for use in its proposed Rule 4410.7030, subp. 1(E).

Proposed Rule 4410.7030, subpart 2, Content of Notice. The notice should identify Minnesota’s laws and rules which will govern regulatory review of project. Recipients will need to get up to speed quickly if there is only one meeting in which they can “suggest alternatives and impacts to address in the environmental report,” and knowledge of the laws that govern the proceeding will aid citizens (and governmental units) in this respect.

Proposed Rule 4410.7030, subp. 3, Public Meeting. While this proposed Rule requires notice of the public meeting to be published in the *EQB Monitor*, the Rule should also require local newspaper publication of notice of the public meeting.

Proposed Rule 4410.7030, subp. 4, Conduct of Public Meeting. This proposed Rule offers the public “at least ten days from the day of the public meeting for the public to submit written comments regarding the proposed project.” Affected persons will need some time to digest what they have learned at the meeting, including time to formulate suggestions for alternatives or items to include in the environmental report. This language should be amended to afford the public at least 20-30 days to submit their written comments. This is especially true since anyone who wants to suggest an alternative or impact must make a convincing argument to the EQB Chair, and include supporting documentation (subp. 6). It is clearly prejudicial to expect inexperienced members of the public to pull this kind of presentation together in ten days’ time.

Proposed Rule 4410.7030, subp. 7, Chair Decision. This proposed Rule allows the EQB Chair to make all decisions concerning the project or to bring issues to the next board meeting. However, it does not specify whether or how members of the public may seek board review of the Chair’s decision. Does the public have no recourse in the event of disagreement with the Chair’s decision?

Proposed Rule 4410.7035, subp. 1, Content of Environmental Report.

Subpart C. Again, the language calls for analysis of the “human and environmental” impacts of the proposed project and alternatives, but excludes any mention of economic and employment impacts. See our comments to 4410.7015, subp. 5 above.

Another important item that is found in the current Rules for environmental review at the certificate of need stage that is not found in these proposed Rules is the content requirement of “availability” of the proposed project. (See Minn. R. 4410.7100, subp. 3(C) and 4410.7500, subp. 3(C)) This content requirement is critical with regard to the operation of proposed high voltage transmission lines, which may be governed by regional transmission organizations or the Federal Energy Regulatory Agency rather than the permitting state agencies.

The issue of availability for stated need is vital to the question of size, type and timing to be decided by PUC at the certificate of need stage of regulatory proceedings. Has a project been sized to meet a specific electrical need in the state of Minnesota or to also accomplish bulk power transfers to distant markets?

As the EQB well knows, the question of availability became a central issue in Xcel Energy Company’s recent Certificate of Need Application for four high voltage lines in southwest Minnesota (which it claims are needed to transmit wind energy from Buffalo Ridge). The question in that docket was whether the lines would actually be available for use by wind generators (part-time resource availability) in competition with new out-of-state coal generators (full-time resource availability). This is an essential issue in an age of open access transmission rules and wholesale electric competition, and must be preserved as an issue for environmental review at certificate of need, as set forth in the current Rules. The EQB’s SONAR gives no rationale whatsoever for deleting this content requirement.

Proposed Rule 4410.7035, subp. 3, Impacts of High Voltage Transmission Lines.

Again, economic impacts are excluded, which would include potential diminution to values of adjacent properties. Economic impacts must be considered in environmental review at certificate of need.

Conclusion

The EQB’s SONAR repeatedly makes the excuse that there simply is not enough time to do this or that because of the deadlines imposed upon it by statute. We would note that the overriding goal of government agencies – particularly those that are making decisions that will take private land away from our state’s citizens – should be to create a procedure that will produce a complete and justifiable record rather than to rush through a process in an effort to meet some arbitrary deadline. Private citizens stand to

forfeit significant rights in regulatory proceedings for construction of high voltage transmission lines, and need the opportunity to participate fully. As the EQB well knows, Xcel's recent southwest transmission line certificate of need proceeding blew past the statutory deadline by more than six months—with no ill effects. (In fact, it is notable that the EQB's own counsel in Xcel's southwest transmission line certificate of need proceeding publicly scoffed at a six-month statutory deadline in that proceeding.) The agency's overriding objective should be to conduct a fair and comprehensive proceeding. Some of these timelines must be adjusted to accomplish this goal (particularly in the time for public comment at 4410.7030, subp. 4 as outlined above), and we ask the EQB to make a reasonable commitment to the citizens of Minnesota in finalizing these Rules.

Sincerely,

Laura A. Reinhardt

John C. Reinhardt